

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gary A. Snyder**Application No.** 10/661,411**Filed:** September 12, 2003**FILED VIA EFS****Confirmation No.** 6660**For:** GRAPE FLAVORED POME FRUIT**Examiner:** Jyoti Chawla**Art Unit:** 1761**Attorney Reference No.** 6522-78332-01COMMISSIONER FOR PATENTS
SUBMITTED VIA ELECTRONIC FILING SYSTEM**DECLARATION**

1. I, Todd Snyder, am the marketing manager of Snyder LLC or C&O Nursery, Inc. In my capacity as marketing manager, I am familiar with marketing and sales of grape flavored apples that are one of the subjects of the above-referenced patent application (herein after Subject Apples). The Subject Apples are marketed under the trademark GRAPPLE®.

2. I have read the above-referenced patent application and I understand that claims in the patent application, including claims that cover the Subject Apples and methods of making the Subject Apples, have been rejected as being obvious and that my prior declaration regarding the commercial success of the product has been questioned. More specifically, the Patent and Trademark Office has questioned whether the commercial success of the product is attributable to marketing rather than the uniqueness of the product itself.

3. For the 2007/2008 sales season (September 1, 2007 to June 1, 2008) only \$33,501 by Snyder LLC and its manufactory licensees, was spent on marketing the Subject Apples. This marketing money was spent primarily for in-store live sampling promotions and for the design and production of about 1000 two apple box displays that were distributed to purchasers of the Subject Apples (*e.g.* retail stores) for their use in re-selling the Subject Apples. Money spent on approximately 4000 displays that have yet to be distributed is not included in the \$33,000 figure. Purchasers of the Subject Apples in many cases used the displays but otherwise are not believed to have engaged in significant marketing efforts concerning the Subject Apples. However, the Subject Apples continue to sell at approximately twice (2x) the price of similar non-grape

flavored apples. Given the small marketing expenditure and the premium price commanded by the product, I believe that the sales of Subject Apples are due to the uniqueness and inventive nature of the product.

4. For the purposes of placing the commercial success of the product in context, I am providing the following information that has been updated from my prior declaration to include final sales information for the 2007/2008 sales year (Table 1, below).

5. The sales of the Subject Apples are summarized in Table 1 below.


Table 1

| Year | Euros of Subject Apples Sold | Wholesale Value | Price per Euro* |
|-----------|------------------------------|-----------------|-----------------|
| 2004-05 | 252,031 | \$6,773,444 | \$26.87 |
| 2005-06 | 173,121 | \$4,847,388 | \$28.00 |
| 2006-07 | 213,951 | \$5,979,106 | \$27.95 |
| 2007-08** | 228,508 | \$6,567,888 | \$28.74 |
| TOTALS | 867,611 | \$24,167,826 | \$27.75 |

* Euro refers to a container that includes 26 pounds of product.

** The 2007-08 season was approximately 5 weeks shorter than the prior seasons.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Signed name
11/10/08

Printed or typed name
Todd A. Snyder
Date
11-10-08